IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 3RD OCTOBER 2006 / 11TH ASWINA 1928

ST.Rev..No. 13 of 2005()

TA.246/2002 of COMMR.KERALA AGR.IT & STAT,TVM. DT.24.8.2002
.....

REVISION PETITIONER/RESPONDENT/REVENUE

STATE OF KERALA, REP. BY
DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES, ERNAKULAM.

BY GOVERNMENT PLEADER SRI.GEORGEKUTTY MATHEW

RESPONDENTS: APPELLANT/ASSESSEE

SMT.THRESSIAMMA SKARIAH,
THRESSY WOOD INDUSTRIES, ELANTHOOR.

BY ADV. SRI.MVS.NAMBOOTHIRY

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 03/10/2006, ALONG WITH STRV.NO.2/2005 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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S.T.R.V. Nos.13 & 2 of 2005

.....

Dated this the 3rd day of October, 2006.

JUDGMENT

Ramachandran Nair, J.

The common question raised in the two revisions filed by the State against the common order of the Tribunal in the case of the same assessee for the two assessment years 1994-95 and 1995-96 is whether the Tribunal was justified in cancelling assessment under Section 5A on the purchase turnover of timber from agriculturists by the respondent-assessee for use in manufacture of furniture for sale in the State. Even though assessment was sustained in first appeal, the Tribunal held that timber is an item coming under the 5th Schedule to the KGST Act taxable at two points and therefore, assessment under Section 5A is not possible. The Tribunal further held that when the item falls under 5th Schedule, it cannot be assessed under residuary entry of the First Schedule for the purpose of levy of tax under Section 5A. Government Pleader contended that Section 5A applies even in respect of commodities falling under the 5th Schedule which are taxable at two points of sale. The facts are not in dispute in as much as purchases are from agriculturists who have turnover below the non-taxable limit and who are not liable to pay tax at sale point of timber sold by them to the respondent-assessee. Since the commodity purchased namely, timber is taxable and the

purchase is in the circumstance under which no tax is payable by the seller, the respondent is liable to pay tax under Section 5A as respondent admittedly used item in the manufacture of furniture for sale in the State. The next question to be considered is whether Section 5A applies in respect of commodities falling under 5th Schedule to the KGST Act. We do not find any restriction under Section 5A limiting liability to any goods or any class of goods or to goods falling under any of the Schedules to the Act. Section 5A is a charging Section by itself and if conditions stated therein are satisfied, it would apply to commodity falling under any of the Schedules to the Act. Therefore, Section 5A applies to commodities falling under 5th Schedule also. However, during the relevant years the tax payable in respect of a commodity under the 5th Schedule when sold by a dealer to a registered dealer, whether it be for resale or for consumption or use, is only at the rate provided under column 4 which in this case is 6% for 1994-95 and 10% for 1995-96. Later by an amendment of 1997 even sale to a registered dealer other than for resale was brought to tax under column 8. Therefore, in respondent-assessee's case even though timber purchased is used in manufacture and were not sold, liability under Section 5A should be limited to the tax payable under column 4 of the 5th Schedule. We, therefore, allow the revision cases by reversing the order of the Tribunal but with direction to the officer to refix the liability at the

rate applicable during the relevant years under column 4 of the 5th Schedule to the KGST Act as stated above.

C.N.RAMACHANDRAN NAIR
Judge

K.M.JOSEPH
Judge

pms

C.N.RAMACHANDRAN NAIR &
K.M.JOSEH, JJ.

T.R.C. No. of 200

JUDGMENT

Dated